IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2185 OF 2005

IN

SUIT NO.1656 OF 2005

Mrs.Swaran K. Gupta. ...Plaintiff.

vs.

Mr.Pankaj K. Gupta. ...Defendant.

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Mr.Kamal Khata i/b. J.A.Shah & Associates, for Plaintiff.

Mr.Vijay Kothari i/b. Deven Dwarkadas, for Defendant.

**CORAM: D.K.DESHMUKH,J.**

**DATED: 28th MARCH,2007..**

**P.C**.:-

1. This is one more litigation where the greed of the son for the property has forced the mother to approach the Court repeatedly. The plaintiff who is the mother of the defendant has taken out the notice of motion no.1814 of 2005. That notice of motion was disposed of by the Court by order dated 21.7.2005. By that order, the Court after considering the rival contentions held that so far as flat no.6 which

admeasures 1425 sq.ft. is concerned, plaintiff is the owner and she is entitled to occupy the entire flat. The Court was aware that some portion of that flat no.6 was occupied by the defendant and therefore, the Court made the following order:-

> "(a) Pending the hearing and final disposal of suit, defendant, his servants, agents or any persons claiming through him are restrained from in any manner obstructing the use, occupation, possession and enjoyment of plaintiff in respect of suit premises viz. Flat no.6, Pankaj Mahal (earlier known as Gupta Mahal), Dinshaw Wachha Road, Churchgate, Mumbai 400 020 admeasuring 1425 sft.
>
> (b) However, this will not prevent either the defendant or the other son Kamal Gupta from entering suit premises and/or remaining/ residing therein but without in any manner interfering with and obstructing plaintiff's exclusive possession of the entire premises i.e. 1425 sq.ft.
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> (c) Since I have passed an order restraining defendant from obstructing use, occupation as well as possession of plaintiffs in respect of suit premises viz., Flat no.6, admeasuring 1425 sft. Situate in building Pankaj Mahal, needless to state that any obstruction presently placed in such use and occupation and enjoyment of flat shall be removed

and the entire flat is made available for plaintiff's use."

It is clear that by that order the Court permitted the plaintiff to occupy the entire flat no.6, area admeasuring 1425 sq. ft. That order has become final between the parties. It is also an admitted position that some part of the flat no.6 is occupied by the defendant and he is not vacating it and he is preventing the plaintiff from making suitable alterations in the flat so that she can occupy the entire flat no.6 area admeasuring 1425 sq.ft. Therefore, this notice of motion has been taken out by the plaintiff, basically for implementation of that order. What is surprising is that though the defendant cannot dispute that as per the order dated 21.7.2005 the plaintiff is entitled to occupy the entire area of the flat no.6 though he is in occupation of some portion of the flat, he is not voluntarily prepared to vacate it. In my opinion, this Court has made the order to place the plaintiff in possession of the entire flat no.6 and therefore, it is the duty of this Court to make orders that may be necessary to actually put the plaintiff in possession of the flat as per the directions issued by this Court. Considering the attitude adopted by the defendant, in my opinion, the following order would meet the ends of justice:-

(i) The Receiver of this Court is appointed as Receiver for the

limited purpose of getting the order dated 21.7.2005 fully implemented. The Receiver shall, if necessary, take police help and shall get flat no.6 vacated by the defendant. After the defendant vacates the flat, the Receiver shall take steps by engaging a Contractor to make suitable modifications in the flat so that the plaintiff can be in exclusive possession of the flat no.6. After the work of making alterations is completed, the bill for expenditure that may have been incurred by the Receiver shall be presented by the Receiver to the defendant and on presentation of the bill, the defendant shall make payment of the amount to the Receiver within one week.

(ii) It needs to be pointed out that before making this order, I had put it to the learned Counsel appearing for the defendant that the defendant himself should vacate the area and remove any obstruction that he has placed which prevents the plaintiff from occupying the flat as per the order of the Court. But the learned Counsel appearing for defendant after taking instructions from the defendant stated that the defendant is not willing to do that. It is only because of the unwillingness of the defendant and his insistence on making attempt to frustrate the order of this Court, the Court was forced to make the above order. The Receiver is directed to take immediate steps to implement this order and submit the report to this Court. The notice of motion is disposed of.

The defendant is directed to pay as and by way of cost of this notice of motion Rs.10,000/- to the plaintiff.

The request made by the defendant for stay of this order is rejected.

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